

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS		DEFENDANTS
ATTORNEYS (Firm Name, Address, and Telephone No.)		ATTORNEYS (If Known)
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>FRBP 7001(1) – Recovery of Money/Property</p> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other </div> <div style="width: 48%;"> <p>FRBP 7001(6) – Dischargeability (continued)</p> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <p>FRBP 7001(2) – Validity, Priority or Extent of Lien</p> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property</div> <div style="width: 48%;"> <p>FRBP 7001(7) – Injunctive Relief</p> <input type="checkbox"/> 71-Injunctive relief – reinstatement of stay <input type="checkbox"/> 72-Injunctive relief – other </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <p>FRBP 7001(3) – Approval of Sale of Property</p> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)</div> <div style="width: 48%;"> <p>FRBP 7001(8) Subordination of Claim or Interest</p> <input type="checkbox"/> 81-Subordination of claim or interest </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <p>FRBP 7001(4) – Objection/Revocation of Discharge</p> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)</div> <div style="width: 48%;"> <p>FRBP 7001(9) Declaratory Judgment</p> <input type="checkbox"/> 91-Declaratory judgment </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <p>FRBP 7001(5) – Revocation of Confirmation</p> <input type="checkbox"/> 51-Revocation of confirmation</div> <div style="width: 48%;"> <p>FRBP 7001(10) Determination of Removed Action</p> <input type="checkbox"/> 01-Determination of removed claim or cause </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <p>FRBP 7001(6) – Dischargeability</p> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <p style="text-align: center;">(continued next column)</p> </div> <div style="width: 48%;"> <p>Other</p> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </div> </div>		
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR		BANKRUPTCY CASE NO.	
DISTRICT IN WHICH CASE IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE	
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE	
SIGNATURE OF ATTORNEY (OR PLAINTIFF)			
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF)		

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:	}	
	}	Case No. 3:05-10300
	}	Chapter 13
Lewis Wayne Bennett	}	Judge George C. Paine, II
SSN: xxx-xx-0825	}	
	}	
Debtor,	}	
	}	
Lewis Wayne Bennett	}	Adversary Proceeding No.: _____
	}	
	}	
Plaintiff,	}	
	}	
vs.	}	
	}	
AFNI, Inc. and Professional	}	
Adjustment Service, Inc.,	}	
	}	
	}	
	}	
Defendant(s).	}	

**ADVERSARY COMPLAINT AND REQUEST FOR SANCTIONS FOR VIOLATION OF
AUTOMATIC STAY OF
11 U.S.C. § 362**

COMES NOW the Debtor/Plaintiff, [hereinafter the "Plaintiff"], by and through counsel, and would move the Court to grant sanctions and attorney fees against AFNI, Inc. and Professional Adjustment Service, (hereinafter the "Defendants") for the Defendants' willful violations of the automatic stay of 11 U.S.C. § 362.

As grounds, the Plaintiff would state the following:

JURISDICTION AND VENUE

1. Jurisdiction over this case is proper pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue over this case is conferred by 28 U.S.C. §§ 1408 and 1409.
3. This is a core proceeding and is governed by the Federal Rules of Bankruptcy Procedure § 7001(1).

FACTS

4. The Plaintiff filed a Chapter 13 Bankruptcy on August 27th, 2005.
5. Defendant Professional Adjustment Service was listed as an unsecured creditor on the Debtor's Schedule F as "Payment Amer" with an address of P.O. Box 24850, Nashville, TN 37202, as was reported on the Plaintiff's credit report prior to the filing of the Plaintiff's bankruptcy. The amount of the debt was listed as \$488.00 as was listed on the Debtor's credit report.
6. The Plaintiff attended his scheduled Meeting of Creditors on September 29th, 2005.
7. The Plaintiff's Chapter 13 Plan was confirmed on October 20th, 2005, paying a 20% dividend to his unsecured creditors.
8. The Defendant Professional Adjustment Service received notice of the bankruptcy petition and subsequently filed an unsecured claim for \$487.51 on October 4th, 2005 on behalf of the original creditor Charter Communications (Exhibit A). Defendant Professional Adjustment Service listed its mailing address as P.O. Box 24850, Nashville, TN 37202, which is the same address listed on the petition and reported on the Debtor's credit report.
9. Defendant Professional Adjustment Service has had actual and lawful notice of the Bankruptcy.
10. According to the records of the Chapter 13 Trustee, Defendant Professional Adjustment Service has been receiving payment on their allowed unsecured claim.
11. At some time during the Plaintiff's Chapter 13, Defendant Professional Adjustment Service either transferred or sold the debt to Defendant AFNI, Inc. for collection, in violation of the automatic stay, even though they were aware that the debt could not be legally collected.
12. On or around May 30th, 2007 Defendant AFNI, Inc. sent Plaintiff a letter titled "SETTLEMENT OFFER," which clearly states in the body of the letter that it was an attempt to collect a debt, demanding payment of \$487.51 (Exhibit B).
13. On June 6th, 2007 Defendant AFNI Inc. was sent a letter by Plaintiff's counsel advising them that the Plaintiff had filed a bankruptcy and that any further communications would be viewed as

violations of the automatic stay (Exhibit C).

14. On May 4th, 2008 Defendant AFNI Inc. willfully sent Plaintiff another letter entitled “SETTLEMENT OFFER,” in which Defendant AFNI, Inc. admits that the communication is an attempt to collect a debt (Exhibit D).

CAUSE OF ACTION

15. As a result of the Defendants' collection efforts, the Plaintiff has suffered emotional distress due to the fact that he believed the creditors could no longer collect debts from him and that he was under the protection of the automatic stay afforded by the United States Bankruptcy Court.
16. As a result of the Defendants' collection efforts, the Plaintiffs have suffered emotional distress due to the fact that they are fearful that they will continue to receive future wrongful attempts to collect the debt.
17. The Defendants have refused to comply with the automatic stay of 11 U.S.C. § 362 by continuing to contact and harass the Plaintiff despite numerous notices of the bankruptcy.
18. The Defendants are in violation of the Fair Debt Collection Practices Act.
19. The Plaintiff submits that the Defendants' actions are willful, given the fact that the Defendants had actual notice of the Bankruptcy.
20. The Plaintiff submits that the Defendant's actions warrant the appropriateness of punitive damages.

PRAYER FOR RELIEF

1. In accordance with 11 U.S.C. § 362(k), the Plaintiff prays for an order granting sanctions against the Defendants in the amount of \$10,000.00 in compensatory damages to date for the Plaintiff from each Defendant.
2. In accordance with 11 U.S.C. § 362(k), the Plaintiff prays for an order granting punitive damages against each Defendant in the amount of \$90,000.00.
3. In accordance with 11 U.S.C. § 362(k), the Plaintiff prays for an order granting attorney fees in the in connection with this adversary proceeding and the collection of any judgment that arises

therefrom.

4. Any other general relief that the court deems just and proper.

Respectfully submitted,

/s/ James A. Flexer

James A. Flexer, BPR #9447

Attorney for Debtor

176 2nd Avenue North, Suite 501

Nashville, TN 37201

(615) 255-2893

fax: (615) 242 8849

cm-ecf@jamesflexerconsumerlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2008 I furnished a true and correct copy of the foregoing to the following parties in interest:

Henry E. Hildebrand, III
Chapter 13 Trustee
P.O. Box 190664
Nashville, TN 37219-0664

Electronic

Richard Clippard
318 Customs House
701 Broadway
Nashville, TN 37203

Electronic

Lewis Wayne Bennett
400 Rolling Acres Loop
Hartsville, TN 37074

U.S. mail first class

Professional Adjustment Service, Inc.
P.O. Box 24850
Nashville, TN 37202

Certified Mail, Return Receipt
Requested, and U.S. Mail first
class

AFNI, Inc.
P.O. Box 3427
Bloomington, IL 61702-3427

Certified Mail, Return Receipt
Requested, and U.S. Mail first
class

Attn: President or Officer
AFNI, Inc.
404 Brock Drive
Bloomington, IL 61701

Certified Mail, Return Receipt
Requested, and U.S. Mail first
class

C T Corporation System
Registered Agent for AFNI, Inc.
800 Gay Street, Suite 2021
Knoxville, TN 37929-9710

Certified Mail, Return Receipt
Requested, and U.S. Mail first
class

Attn: President or Officer
Professional Adjustment Service, Inc.
450 10th Circle North
Nashville, TN 37203

Certified Mail, Return Receipt
Requested, and U.S. Mail first
class

Stephen K. Heard
Registered Agent for Professional Adjustment Service, Inc.
424 Church Street, Suite 1401
Nashville, TN 37219

Certified Mail, Return Receipt
Requested, and U.S. Mail first
class

I have sent 9 notices.

/s/ James A. Flexer
James A. Flexer

EXHIBIT A

file 10-4-05

13414297

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE.

~~BENNETT, LEWIS WAYNE~~

Case No. 05-10300 M TN

Debtor(s)

D.O.S. 12/21/01

CHAPTER 13
PROOF OF CLAIM

Name of Creditor: CHARTER COMMUNICATIONS/SUB/LEBANON*
Mailing Address: C/O Professional Adjustment Service
City, State, Zip: P O Box 24850 Nashville TN 37202
Account No. 13414297

1. Unpaid principal or unpaid amount of judgment. This amount should contain no unamortized interest. Interest will be computed by the Trustee's office as provided in the plan. Real estate mortgage holders should file two claims: one claim should include only arrearage, late fees, attorneys fees and foreclosures costs incurred through date of filing of the debtor's bankruptcy petition; a separate claim should reflect the payoff balance, the regular monthly payment and applicable interest rate.
\$ _____
2. Other charges allowable. Examples include insurance charge, foreclosure expense, repossession expense, etc.
Explain: _____ \$ _____
3. Attorney fee for representation in Bankruptcy Court if provided in note or contract and actually paid.
\$ _____
4. TOTAL CLAIM (add 1 through 3 above).
487.51
5. If judgment, amount \$ _____, date _____, docket # _____, et: _____
6. Type of debt:

SECURED ☐
UNSECURED ☒
PRIORITY ☐

Unsecured claimants should attach statement of account or note. If you claim to be secured you must attach a copy of the security instrument, promissory note, and proof of perfection. If secured the total value of the collateral securing the obligation is:

VALUE: \$ _____

7. The claimant signing below hereby asserts a claim against the debtor in the amount above. The creditor states that there are no set off or counterclaims which the debtor may have; that the undersigned is authorized to file this Proof of Claim, and that this claim contains no unamortized interest.
8. Any distribution will be made to the creditor at the address above unless otherwise noted here:

Professional Adjustment Service

P O Box 24850

Nashville TN 37202

SEP 17 2005
DATE

Bryan Whitehurst
SIGNATURE

agent
TITLE (if applicable)

NOTE: MAIL TWO COPIES OF CLAIM(S) AND ATTACHMENTS TO:

U.S. Bankruptcy Court
Office of the Clerk
701 Broadway, Customs House
Nashville, Tennessee 37203

This Proof of Claim should be filed by the time of the first meeting of creditors.

PENALTY FOR FRAUDULENT CLAIM IS FINE UP TO \$5,000.00 OR IMPRISONMENT UP TO 5 YEARS OR BOTH.

EXHIBIT B

Afni, Inc.
PO Box 3427
Bloomington, IL 61702-3427
www.afnicollections.com

SETTLEMENT OFFER

Pay half of your balance due.

We are making another attempt to contact you regarding your overdue account. In an effort to resolve this matter we will accept \$243.78, half of the original amount due. Once paid, this account will be closed and you will no longer have to worry about this obligation.

If you have any questions, please contact our office toll free at (866)633-4379 Monday through Friday 7am - 9pm CST. For proper credit on your account please write this number 010181868-02 on your payment.

To manage your account online, visit us at www.afnicollections.com. You can login with your account number and last 4 digits of your Social Security number. You can pay securely online using your debit card, Visa®, MasterCard®, or checking account and have your receipt available online once your payment posts. Our records will reflect the status of your account with Afni, Inc. as settled in full.

Credit card payments by mail are also accepted. Credit card payment options are located on the back of the payment stub located at the bottom of this letter and can be mailed back inside the enclosed envelope.

This is an attempt to collect a debt. Any information obtained will be used for that purpose. You have the right to inspect your credit. This letter is from a debt collector.

The collection agency is licensed by the collection service board of the department of commerce and insurance.

Please retain this information for your records

Original Account #	Balance Due	Credit	Credit Account #	Date
010181868-02	\$487.51	CHARTER COMMUNICATIONS	8353100830041335	6/30/2007

Detach along perforation and return bottom portion along with payment in the enclosed envelope. Credit card payment options are on the back of notice.



For proper credit, please include your Afni account # listed below on your check



AFN150-06500202515-045P-2.2015

1057-202
CORBICK KES



Address Service Requested

AFN150-06500202515-045P-2.2015

1057-202
CORBICK KES

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CORBICK KES

1057-202
CORBICK KES

EXHIBIT C

THE LAW OFFICES OF JAMES FLEXER

176 2ND AVE N STE 501
NASHVILLE, TN 37201
TEL (615) 255-2893
FAX (615) 242-8849
WEBSITE WWW.FLEXERLAW.COM

JAMES A. FLEXER
JEFFREY M. LEVINE
DANIEL T. CASTAGNA
KYLE D. CRADDOCK
LEWIS A. WILLIAMS
BRYAN C. PENLAND

Wednesday, June 06, 2007

AFNI, INC.
PO BOX 3427
BLOOMINGTON, IL 61702-3427

Re: BENNETT, LEWIS WAYNE
Account #010181868-02

To Whom It May Concern:

On August 27, 2005, the above-named debtor filed a voluntary petition under Chapter 13 of the U.S. Bankruptcy Code. The case number is 3:05-bk-10300. You can verify the bankruptcy filing by contacting the United States Bankruptcy Court for the Middle District of Tennessee at (615) 736 5584.

Under 11 U.S.C. Section 362 (a), you may not:

- take any action against the debtor or the debtor's property to collect any debt;
- enforce any lien on debtor's real or personal property;
- repossess any property in debtor's possession;
- discontinue any service or benefit currently being provided to the debtor by you;
- take any action to evict the debtor from his/her residential dwelling.

A violation of these prohibitions may be considered contempt of court and punished accordingly.

Sincerely,

James A. Flexer/dw
James A. Flexer
JAF/dw

WE ARE A FEDERALLY DESIGNATED DEBT RELIEF AGENCY. WE HELP PEOPLE FILE FOR BANKRUPTCY RELIEF UNDER THE BANKRUPTCY CODE.

Cc: LEWIS WAYNE BENNETT
400 ROLLING ACRES LOOP
Hartsville, TN 37074

EXHIBIT D

Afri, Inc.
PO Box 3427
Bloomington, IL 61702-3427
www.afnicollections.com

SETTLEMENT OFFER

Pay half of your balance due.

We are making another attempt to contact you regarding your overdue account. In an effort to resolve this matter we will accept \$243.76, half of the original amount due. Once paid, this account will be closed and you will no longer have to worry about this obligation.

If you have any questions, please contact our office toll free at (866)633-4379 Monday through Friday 7am - 9pm CST. For proper credit on your account please write this number 010181868-02 on your payment.

To manage your account online, visit us at www.afnicollections.com. You can login with your account number and last 4 digits of your Social Security number. You can pay securely online using your debit card, Visa®, MasterCard®, or checking account and have your receipt available online once your payment posts. Our records will reflect the status of your account with Afri, Inc. as settled in full.

Credit card payments by mail are also accepted. Credit card payment options are located on the back of the payment stub located at the bottom of this letter and can be mailed back inside the enclosed envelope.

This is an attempt to collect a debt. Any information obtained will be used for that purpose. You have the right to inspect your credit. This letter is from a debt collector.

The collection agency is licensed by the collection service board of the department of commerce and insurance.

Please retain this information for your records

Afri, Inc. Account #	Balance Due	Creditor	Credit Account #	Date
010181868-02	\$487.51	CHARTER COMMUNICATIONS	8353100830041335	5/4/2008

Detach along perforation and return bottom portion along with payment in the enclosed envelope. Credit card payment options are on the back of notice.



For proper credit, please include your Afri account # listed below on your check



AFN00-010001101868-0208-2018

Department 655
PO BOX 4127
CONCORD, CA 94524



Afri, Inc. Account #: 010181868-02
Original Creditor: CHARTER COMMUNICATIONS
Client Account #: 8353100830041335
Date: 5/4/2008
Toll Free: (866)633-4379

Discounted Amount Due: \$243.76

Address Service Requested.

#EWNFTZF AFN00044691080556



LEWIS BENNETT
400 ROLLING ACRES LOOP
HARTSVILLE TN 37074-3413

PO Box 3427
Bloomington, IL 61702-3427

